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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,265	09/25/2001	Brian Maso	1014/202	9942
26588	7590	03/22/2005	EXAMINER	
LIU & LIU 444 S. FLOWER STREET SUITE 1750 LOS ANGELES, CA 90017			BONURA, TIMOTHY M	
			ART UNIT	PAPER NUMBER
			2114	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,265

Applicant(s)

MASO ET AL.

Examiner

Tim Bonura

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9-11, 13-21 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 5, 8, 12 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119


- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/24/2002.

- 4) ☐ Interview Summary (PTO-413) PRIMARY EXAMINER
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____


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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6, 7, 9-11, 13-21 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Scarpelli, et al, U.S. Patent Number 6,816,898.
3. Regarding claim 1:
 - a. Regarding the limitation of “measurement means that measure information relating to task usage, metrics, and performance of a software-based business application process,” Scarpelli discloses a system with means for a network monitor that includes data collection modules to monitor data devices and applications software. (Lines 3-16 of Column 6).
 - b. Regarding the limitation of “evaluation means for evaluating measured information based on underlying logic of the process,” Scarpelli discloses a system with means for a cognitive signature module the generates and maintains dynamic cognitive signatures based on the data collected. (Lines 16-21 of Column 6).
4. Regarding claim 2, Scarpelli discloses a system with means for the cognitive module to collect data and develop signatures based on this data. (Lines 21-25 of Column 6).

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5. Regarding claim 3, Scarpelli discloses a system with wherein the cognitive module is dynamic and continually updates with the most recent data. (Lines 25-30 of Column 3).
6. Regarding claim 4, Scarpelli discloses a system with a network monitor that is coupled to the network and can monitor application and network performance. (Lines 33-41 of Column 5).
7. Regarding claim 6, Scarpelli discloses a system with means for generating signatures based on real time data. (Lines 50-55 of Column 6).
8. Regarding claim 7, Scarpelli discloses a system with means for notifying a user upon detection of an error or problem with warnings. (Lines 5-8 of Column 12).
9. Regarding claim 9, Scarpelli discloses a system with means for data to be stored on a disk and or tape drives. (Lines 55-63 of Column 6).
10. Regarding claim 10, Scarpelli discloses a system with means or monitoring data over any specific time period desired. (Lines 30-42 of Column 6).
11. Regarding claim 11:
 - c. Regarding the limitation of “monitoring means for monitoring metrics and performance of the process,” Scarpelli discloses a system with means for a network monitor that includes data collection modules to monitor data devices and applications software. (Lines 3-16 of Column 6).
 - d. Regarding the limitation of “evaluation means for evaluating monitored information based on logic of the process,” Scarpelli discloses a system with means for a cognitive signature module that generates and maintains dynamic cognitive signatures based on the data collected. (Lines 16-21 of Column 6).

- e. Regarding the limitation of “recovery means for automatically recovering the application based on evaluated monitored information,” Scarpelli discloses a system with means for analyzing and identifying information about problems in the system based data collected and using signatures that are generated to be used by an analysis module that can have pre-programmed produced to respond to problems. (Lines 63-67 of Column 6 and Lines 1-12 of Column 7).
12. Regarding claim 13, Scarpelli discloses a system with means for notifying a user upon detection of an error or problem with warnings. (Lines 5-8 of Column 12).
13. Regarding claim 14, Scarpelli discloses a system with means for gathering information concerning the performance of the network applications and the number of errors in the system. (Lines 3-16 of Column 6).
14. Regarding claim 15, Scarpelli discloses a system with means monitoring the real time performance of the network applications based on data received by the network monitor. (Lines 5-15 and 28-30 of Column 6).
15. Regarding claim 16, Scarpelli discloses a system with means for analyzing and identifying information about problems in the system based data collected and using signatures that are generated to be used by an analysis module that can have pre-programmed produced to respond to problems. (Lines 63-67 of Column 6 and Lines 1-12 of Column 7).
16. Regarding claim 17, Scarpelli discloses a system with wherein the cognitive module is dynamic and continually updates with the most recent data. (Lines 25-30 of Column 3).
17. Regarding claim 18, Scarpelli discloses a system with means for data to be stored on a disk and or tape drives. (Lines 55-63 of Column 6).

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18. Regarding claim 19, Scarpelli discloses a system with means or monitoring data over any specific time period desired. (Lines 30-42 of Column 6).

19. Regarding claim 20, Scarpelli discloses a system with means for notifying a user upon detection of an error or problem with warnings. (Lines 5-8 of Column 12).

20. Regarding claim 21:

f. Regarding the limitation of “an instrumentation API for setting up monitoring parameter,” Scarpelli discloses a system an API for setting up customized scripts for information gathering. (Lines 54-65 of Column 4).

g. Regarding the limitation of “an event notification and automatic recovery evaluation engine processing information for the instrument API,” Scarpelli discloses a system with means for analyzing and identifying information about problems in the system based data collected and using signatures that are generated to be used by an analysis module that can have pre-programmed produced to respond to problems. (Lines 63-67 of Column 6 and Lines 1-12 of Column 7).

h. Regarding the limitation of “a monitoring console server providing a monitoring operations of the application manager,” Scarpelli discloses a system with means for an administrative interface with the ability to selectivity monitor actions. (Lines 60-67 of Column 10).

21. Regarding claim 23, Scarpelli discloses a system with means for data to be stored on a disk and or tape drives. (Lines 55-63 of Column 6).

22. Regarding claim 24, Scarpelli discloses a system with means for an administrative interface with the ability to selectivity monitor actions. (Lines 60-67 of Column 10).

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23. Regarding claim 25, Scarpelli discloses a system with means for the cognitive module to collect data and develop signatures based on this data. (Lines 21-25 of Column 6). Scarpelli discloses a system with wherein the cognitive module is dynamic and continually updates with the most recent data. (Lines 25-30 of Column 3).

Allowable Subject Matter

24. Claims 5, 8, 12, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**.

- The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.
- The examiner can be reached at: **571-272-3654**.

26. If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Rob Beausoliel**.

- The supervisor can be reached on **571-272-3645**.

27. The fax phone numbers for the organization where this application or proceeding is assigned are:

- **703-872-9306 for all patent related correspondence by FAX.**

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28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

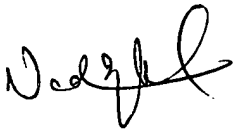
29. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **571-272-2100**.

30. Responses should be mailed to:

○ **Commissioner of Patents and Trademarks**

P.O. Box 1450

Alexandria, VA 22313-1450



NADEEM IQBAL
PRIMARY EXAMINER

tmb

March 19, 2005

Tim Bonura
Examiner
Art Unit 2114